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| IN THE MATTER OF: | ) | AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS |
| Denova Environmental Superfund Site<br>Rialto, San Bernardino County, California | ) | U.S. EPA Region 9<br>CERCLA Docket No. 2006-10 |
| Environmental Enterprises, Inc. | ) | PROCEEDING UNDER SECTION 122(h)(1) OF CERCLA<br>42 U.S.C. § 9622(h)(1) |
| and | ) | |
| Daniel J. McCabe, | ) | |
| SETTLING PARTIES | ) | |

## I. JURISDICTION

1. This Agreement for Recovery of Past Response Costs ("Agreement") is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Superfund Branch Chiefs pursuant to Regional Delegation 1290.20.

2. This Agreement is made and entered into by Environmental Enterprises, Inc. ("EEI") and Daniel J. McCabe (collectively referred to as "Settling Parties") and EPA. Each Settling Party consents to and will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms.

## II. BACKGROUND

3. This Agreement concerns the Denova Environmental Superfund Site ("Site") located at 2610 North Alder Ave., Rialto, San Bernardino County, California. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. This Site has been subject to CERCLA emergency and time critical response actions. The Site was historically utilized as a hazardous waste and explosives storage facility.

a. On March 14, 2001, EPA's Emergency Response Section and the Bureau of Alcohol, Tobacco, and Firearms identified six containers of highly explosive and shock sensitive

tetrazene, a hazardous substance, at the Site. On June 12, 2001, the Action Memo was signed by the EPA Response, Planning and Assessment Branch Chief documenting that conditions at the Site met the criteria for a removal response action as outlined at Section 300.415(b)(2) of the National Contingency Plan ("NCP"). On June 14, 2001, EPA initiated a time critical removal action at the Site to destroy these highly explosive hazardous substances.

b. On May 28, 2002, EPA's Emergency Response Section returned to the Site to address improperly stored hazardous materials and explosives. EPA's On Scene Coordinators ("OSCs") observed the following conditions at the Site:

i. The Site occupied approximately 20 acres and was divided into three sections. The northern most section contained a blast pit that was formerly permitted for the destruction of certain wastes. The middle section ("hazmat yard") contained six mobile concrete bomb shelters and nineteen conex shipping containers containing an array of hazardous wastes and explosive materials. The southern section (the "explosive yard") contained fifteen partially buried explosive storage magazines, approximately eight mobile explosive storage boxes, and eight conex boxes all of which contained and stored explosive, propellant and ordnance products.

ii. The hazmat yard included approximately 750 containers stored in nineteen conex boxes ("bays"), fifty 55-gallon drums containing a variety of acidic, corrosive, and flammable wastes, six mobile concrete bomb shelters containing highly explosive materials, and a blast pit. Hazardous substances identified in the bays included, but were not limited to, mercury, phosphoric acid, picric acid, nitric acid, sulfuric acid, acetic acid, hydrochloric acid, hydrofluoric acid, ethylene bromide, formaldehyde, toluene diisocyanate, lead styphnate, red phosphorus, and chlorine gas.

iii. Approximately 550,000 pounds of explosives were located on Site.

iv. There were several residential neighborhoods within close proximity to the Site. In the event of an explosion, these residents could have been exposed to hazardous substances which pose a significant human health threat through inhalation or dermal contact.

c. The removal of hazardous substances from the Site was determined necessary by the EPA OSCs in order to mitigate the imminent threat of release of hazardous substances into the local community and environment. On June 4, 2002, August 26, 2002 and March 26, 2003 Action Memoranda were signed by the EPA Response, Planning and Assessment Branch Chief documenting that conditions at the Site met the criteria for an emergency response removal as outlined at Section 300.415(b)(2) of the NCP.

d. From November 1992 through March 31, 1998, Broco Environmental, Inc. ("Broco"), a wholly-owned subsidiary of EEI, leased the Site property and operated the facility. In March 1999, Broco was sold to Denova Environmental Inc.

e. EEI was the corporate parent of Broco Environmental, Inc. EEI also acted as a generator, arranging for the disposal of explosives and hazardous waste at the Site. EEI also shipped 44 gallons of reactive railroad flares to Broco.

f. Daniel J. McCabe ("McCabe") is a major stockholder and President of EEI.

g. Perchlorate has been detected in groundwater monitoring wells in the regional groundwater plume in the Rialto-Colton groundwater basin; however, the three groundwater monitoring wells located immediately downgradient of the Site have consistently been non-detect for perchlorate, and based upon the information reviewed by EPA, EPA currently has no plans to require additional investigation or cleanup work at the Site.

5. In performing the response action, EPA has incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.

7. EPA and Settling Parties recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law.

## III. PARTIES BOUND

8. This Agreement shall be binding upon EPA and upon Settling Parties and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

## IV. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in

this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and Settling Parties.

h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice, on behalf of EPA, has paid at or in connection with the Site through the Effective Date of this Agreement, plus accrued Interest on all such costs through such date. These Past Response Costs shall include costs paid at or in connection with the Site for the removal action described in the action memoranda for the Site dated June 12, 2001, June 4, 2002, August 26, 2002, and March 26, 2003.

i. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

j. "Settling Parties" shall mean Environmental Enterprises, Inc. and Daniel J. McCabe.

k. "Site" shall mean the Denova Environmental Superfund site, encompassing approximately 20 acres, located at 2610 North Alder Ave., Rialto, San Bernardino County, California, approximate latitude and longitude are North 34° 9' 17.5" and West 117° 24' 34.5',

respectively.

l. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

## V. PAYMENT OF RESPONSE COSTS

10. Within 5 business days after Settling Parties receive notice from EPA that this Agreement has been signed by EPA and approved by the Attorney General or his/her designee, Settling Parties shall deposit SEVENTY-FIVE THOUSAND DOLLARS ($ 75,000.00) into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank (the "Escrow Account"). If the Agreement is not made effective after public comment, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Parties. If the Agreement is made effective after public comment, Settling Parties shall, within 15 days thereof, cause the monies in the Escrow Account to be paid to EPA in accordance with Paragraphs 11 and 12 below.

11. Payment by Settling Parties shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures found in Appendix A of this Agreement and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name (Denova Environmental), the EPA Region and Site/Spill ID Number, and the EPA docket number for this action.

12. At the time of payment, Settling Parties shall also send notice that payment has been made to EPA in accordance with Section XIII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number and the EPA docket number for this action.

13. The total amount to be paid pursuant to Paragraph 10 by Settling Parties shall be deposited in the Denova / Rialto Colton Plume Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the sites, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

## VI. FAILURE TO COMPLY WITH AGREEMENT

14. Interest on Late Payments. If any Settling Party fails to make any payment required by Paragraph 10 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

15. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 10 are not paid by the required date, Settling Parties shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 14, $500.00 per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name (Denova Environmental Site), the EPA Region 9 and Site Spill ID Number 09JW, and the EPA Docket Number for this action. Settling Parties shall send the check (and any accompanying letter) to:

EPA - Cincinnati Accounting Operations
Attention: Region 9 Receivables
P.O. Box 371099M
Pittsburgh, PA 15251

c. At the time of each payment, Settling Parties shall also send notice that payment has been made to EPA in accordance with Section XIII (Notices and Submissions). Such notice shall identify the EPA Region and Site Spill ID Number 09JW and the EPA Docket Number for this action.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

16. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Parties' failure to comply with the requirements of this Agreement, any Settling Party which fails or refuses to comply with the requirements of this Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. The obligations of Settling Parties to pay amounts owed to EPA under this Agreement are joint and several. In the event of the failure of any one or more Settling Parties to make the payments required under this Agreement, the remaining Settling Party shall be responsible for such payments.

18. Notwithstanding any other provision of this Section, EPA may, in its unreviewable

discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Payment of stipulated penalties shall not excuse Settling Parties from payment as required by Section V or from performance of any other requirements of this Agreement.

## VII. COVENANT NOT TO SUE BY EPA

19. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Agreement. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

## VIII. RESERVATIONS OF RIGHTS BY EPA

20. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 19. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Setting Parties with respect to:

a. liability for failure of Settling Parties to meet a requirement of this Agreement;

b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

21. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

## IX. COVENANT NOT TO SUE BY SETTLING PARTIES

22. Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

23. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

24. Settling Parties agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Parties with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

25. The waiver in Paragraph 24 shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Party. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource

restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

## X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Except as provided in Paragraph 24 (Non-Exempt De Micromis Waiver), nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. Except as provided in Paragraph 24 (Non-Exempt De Micromis Waiver), the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

27. EPA and Settling Parties agree that the actions undertaken by Settling Parties in accordance with this Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

28. The Parties agree that Settling Parties are entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs.

29. Each Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

30. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing

in this Paragraph affects the enforceability of the covenant not to sue EPA set forth in Section VII.

## XI. ACCESS TO INFORMATION

31. Settling Parties shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

32. Confidential Business Information and Privileged Documents.

a. Settling Parties may assert business confidentiality claims covering part or all of the records submitted to EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Parties that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Parties.

b. Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege in lieu of providing records, they shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Parties shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

33. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

## XII. RETENTION OF RECORDS

34. Until 10 years after the effective date of this Agreement, each Settling Party shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

35. After the conclusion of the 10 year document retention period in the preceding Paragraph, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, Settling Parties shall deliver any such records to EPA. Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege, they shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Parties shall retain all records that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

36. Each Settling Party hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

## XIII. NOTICES AND SUBMISSIONS

37. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Parties.

As to EPA:

John Jaros
EPA, Region IX (SFD 9)
75 Hawthorne Street
San Francisco, California 94105

As to Settling Parties:

Environmental Enterprises, Inc.
C/O Daniel J. McCabe
10163 Cincinnati-Dayton Road
Cincinnati, Ohio 45241

## XIV. INTEGRATION/APPENDICES

38. This Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendix is attached to and incorporated into this Agreement: "Appendix A" includes the electronic transfer instructions.

## XV. PUBLIC COMMENT

39. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

## XVI. ATTORNEY GENERAL APPROVAL

40. The Attorney General or his designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

## XVII. EFFECTIVE DATE

41. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 39 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By: _____ 8/10/06

for Daniel A. Meer, Branch Chief [Date]
Response, Planning and Assessment Branch
U.S. Environmental Protection Agency, Region 9

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of CERCLA Docket Number 2006-10, relating to the Denova Environmental Site in Rialto, San Bernardino County, California.

FOR SETTLING PARTY: Environmental Enterprises, Inc.

C/O Daniel J. McCabe

10163 Cincinnati-Dayton Road

Cincinnati, Ohio 45241

By: _____ _____
[Authorized Agent] [Date]

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of CERCLA Docket Number 2006-10, relating to the Denova Environmental Site in Rialto, San Bernardino County, California.

FOR SETTLING PARTY: Daniel J. McCabe

10163 Cincinnati-Dayton Road

Cincinnati, Ohio 45241

By: _____ _____
Daniel J. McCabe [Date]

## Appendix A

## EPA Electronic Transfer Information

For electronic fund transfers, please send to the following address:

Mellon Bank
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh, PA 15235

SWIFT Address: MELNUS3P (needed only for international transfers)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION IX**
**75 Hawthorne Street (ORC3-1)**
**San Francisco, CA 94105**

November 14, 2006

Environmental Enterprises Incorporated
C/O Daniel J. McCabe
10163 Cincinnati-Dayton Road
Cincinnati, Ohio 45241

Daniel McCabe
10163 Cincinnati-Dayton Road
Cincinnati, Ohio 45241

**URGENT LEGAL MATTER**

Re: Effective Date for Agreement for Recovery of Past Response Costs for Denova Environmental Superfund Site: CERCLA Docket No. 2006-10

Dear Mr. McCabe:

Please find enclosed a copy of the final Administrative Order on Consent, U.S. EPA Region 9 CERCLA Docket No. 2006-0010 ( the "Agreement"). between the United States Environmental Protection Agency, EEI and Daniel McCabe for Past Response Costs at the Denova Superfund Site

The public comment period for the Agreement has concluded, and EPA received no comments. Accordingly, there is no information sufficient for EPA to withdraw or modify the Agreement. In accordance with paragraph 41 of the Agreement, the "Effective Date" will be today, November 14, 2006. If you have any questions about the Agreement, do not hesitate to call me at (415) 972-3918.

Sincerely,

Michele Benson
Attorney Advisor

Enclosure

cc: Valerie Mann, DOJ
John Jaros, EPA Reg. IX
Judith Winchell, EPA Reg. IX